

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

MATTHEW RIDGE,

Defendant.

Case No. 2:09-cr-00455-LDG  
Case No. 2:14-cv-00356-LDG

**ORDER**

The defendant, Matthew Ridge, moves pursuant to 28 U.S.C. §2255 to vacate, set aside, or correct sentence by a person in federal custody (#77). The government opposes the motion (#80). The Court finds that the defendant's allegations, as viewed against the record, do not state any ground for relief and will deny the motion.

In late 2009, the defendant was charged with knowingly and intentionally distributing about 265 grams of a mixture or substance containing cocaine, in violation of 21 U.S.C. §841(a)(1) and (b)(1)(C). In early 2010, the parties indicated that they had reached a plea agreement, and the Court set a hearing for the change of plea. However, the defendant did not plead guilty at the hearing. Rather, he requested that the probation office prepare a preliminary pre-sentence report with the specific purpose of ascertaining whether the

1 defendant qualified as a career offender under §4B1.1 of the Sentencing Guidelines. The  
2 parties stipulated to continue the change of plea hearing. The preliminary pre-sentence  
3 report was prepared, and the probation office indicated that defendant would qualify as a  
4 career offender.

5 The change of plea hearing went forward in May 2010. At the outset of that hearing,  
6 the defendant submitted a Substitution of Counsel, which the Court granted. The  
7 defendant then pled guilty pursuant to a plea agreement in which the defendant waived his  
8 right to appeal his conviction and sentence.

9 Prior to sentencing, the probation office prepared a pre-sentence report that  
10 reported the defendant had a prior conviction for Second Degree Assault in the State of  
11 Washington and a prior conviction for Voluntary Manslaughter in the State of California.  
12 The pre-sentence report recommended that, as a result of these prior convictions, the  
13 defendant qualified as a career offender. The defendant (through his new counsel)  
14 submitted a sentencing memorandum in which he argued that the defendant did not qualify  
15 as a career offender because his conviction for Second Degree Assault was not a crime  
16 punishable by imprisonment for a term exceeding one year. The Court rejected the  
17 argument, found that the defendant was a career offender, determined that the advisory  
18 guideline range was 151 to 188 months, and sentenced the defendant to a term of  
19 imprisonment of 151 months.

20 The defendant, acting pro se, filed an untimely appeal. Counsel was subsequently  
21 appointed, and the defendant voluntarily moved to withdraw his appeal. The defendant  
22 also brought a §2255 motion before this Court arguing that his counsel had been  
23 ineffective as the defendant had instructed counsel to file an appeal but counsel had failed  
24 to do so. The government did not oppose and the Court granted the motion. The Court  
25 vacated the original judgment and entered an amended judgment imposing the same  
26 sentence, terms and conditions.

1 Subsequent to entry of the amended judgment, the defendant timely filed an appeal.  
2 The appellate court dismissed that appeal, finding that the defendant had, in entering into  
3 the plea agreement, waived his right to appeal.

4 The defendant then brought the instant §2255 motion, in which he argues he was  
5 denied effective assistance of counsel because (a) his counsel failed to advise him that he  
6 could plead guilty without entering into a plea agreement, thus preserving his right to  
7 appeal, and (b) his counsel provided incorrect advice regarding the career offender criteria,  
8 and as a result of receiving that advice the defendant signed the plea agreement rather  
9 than pleading guilty without entering into a plea agreement. The defendant also argues  
10 that, as his counsel's advice was incorrect, he did not understand the consequences of  
11 signing a plea agreement (rather than pleading guilty without entering into a plea  
12 agreement). In asserting these grounds for relief, the defendant represents that he would  
13 have pleaded guilty without entering into a plea agreement (thus preserving his right to  
14 appeal) had he known that he could do so.

15 For the following reasons, the Court finds that the record is sufficient and does not  
16 need to be expanded, that a hearing is not required, and that the defendant is not entitled  
17 to relief on any of the grounds he has asserted.

18 To prevail on either of his claims of ineffective assistance of counsel, the defendant  
19 must show deficient performance and prejudice. *Strickland v. Washington*, 466 U.S. 668,  
20 687 (1984). "Judicial scrutiny of counsel's performance must be highly deferential." *Id.* at  
21 689. "A fair assessment of attorney performance requires that every effort be made to  
22 eliminate the distorting effects of hindsight. . . ." *Id.* "[A] court must indulge a strong  
23 presumption that counsel's conduct falls within the wide range of reasonable professional  
24 assistance . . . ." *Id.* To show prejudice, "[t]he defendant must show that there is a  
25 reasonable probability that, but for counsel's unprofessional errors, the result of the  
26 proceeding would have been different." *Id.* at 687. "[A] court need not determine whether

1 counsel's performance was deficient before examining the prejudice suffered by the  
2 defendant as a result of the alleged deficiencies. . . . If it is easier to dispose of an  
3 ineffectiveness claim on the ground of lack of sufficient prejudice . . . that course should be  
4 followed." *Id.* at 697.

5 In both of his claims of ineffective assistance of counsel, the defendant asserts he  
6 was prejudiced because, by entering into a plea agreement, he waived his right to appeal a  
7 meritorious issue concerning the career offender enhancement. Similarly, the defendant's  
8 third ground for relief rests on the premise that his plea was involuntary because, by  
9 entering into a plea agreement, he waived his right to appeal a meritorious issue  
10 concerning the career offender enhancement.

11 The defendant asserts that his appellate counsel raised a meritorious challenge to  
12 whether he qualified as a career offender, but that the Ninth Circuit dismissed the appeal  
13 without considering the argument because the defendant had waived his right to appeal.  
14 The defendant does not identify the challenge raised by his appellate counsel. He argues  
15 only that he was prejudiced because the Ninth Circuit could not consider the unspecified  
16 argument on the merits.

17 The record in this matter includes the appellate briefing submitted by the defendant  
18 to the Ninth Circuit. In that briefing, the defendant's appellate counsel asserted an  
19 argument not presented to this Court: that the defendant's conviction for voluntary  
20 manslaughter did not qualify as a crime of violence. The Court readily finds that the  
21 defendant was not prejudiced as a result of the Ninth Circuit being prevented from  
22 considering this argument on appeal, as the argument lacks any merit. Application Note 1  
23 to §4B1.2 of the Sentencing Guidelines expressly recognizes that manslaughter is a crime  
24 of violence. The defendant's contrary argument presented to the Ninth Circuit relied upon  
25 case law concerning a materially distinct definition of crime of violence (set forth at 18  
26 U.S.C. §16) which was not relevant to the determination of whether he is a career offender

1 as defined in §4B1.2(a). As the defendant was not prejudiced as a result of the Ninth  
2 Circuit being prevented from considering this argument, he was not prejudiced by entering  
3 into a plea agreement waiving his right to appeal.

4 Therefore, for good cause shown,

5 THE COURT **ORDERS** that the Defendant's Motion Pursuant to 28 U.S.C. §2255 to  
6 Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (#77) is  
7 DISMISSED;

8 THE COURT FURTHER **DENIES** a Certificate of Appealability; The Court finds,  
9 based on the same reasons enumerated above, that the defendant has not made a  
10 substantial showing that he was denied a constitutional right.

11 THE COURT FURTHER **ORDERS** that the Clerk of the Court shall serve a copy of  
12 this Order and Denial of Certificate of Appealability on the defendant.

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14 DATED this 6 day of June, 2014.

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17 Lloyd D. George  
18 United States District Judge  
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